

### **REMARKS**

Claims 1-21 are now pending and stand rejected. Claims 22-28 are withdrawn from consideration. Applicant is submitting a Request for Continued Consideration (“RCE”) with this Preliminary Amendment. By this Preliminary Amendment, Applicant has canceled claim 3, without prejudice, and has further amended claims 1, 6, 7, 8, 14, 18, and 20. By this preliminary amendment, Applicant also demonstrates reasons why the claims pending here are distinct from the asserted art. In view of the above amendments to the claims and the legal reasoning urged below to demonstrate why the 35 U.S.C. § 103 rejections are improper, Applicant respectfully requests the Examiner to reconsider the outstanding rejections and to withdraw them.

#### ***Claim Objection***

On page 3 of the office action, the Examiner objected to claim 3 as being of improper dependent form. Applicant has canceled claim 3.

#### ***Section 103 Rejections***

On page 4 of the office action, the Examiner rejects claims 1-5, 7-13, 15-18, and 20-21 as unpatentable over U.S. Patent No. 6,374,357 to Mohammed et al., and further in view of Brody’s U.S. Publication No. 2001/0051928. On page 11 of the office action, in paragraph III, the Examiner has rejected claim 6 under 35 U.S.C. Section 103(a) as unpatentable over U.S. Patent No. 6,374,357 to Mohammed et al., as applied to claim 1 and further in view of U.S. Patent No. 6,948,070 to Ginter et al. In paragraph IV of the office action, the Examiner rejects claims 14 and 19 under 35 U.S.C. Section 103(a) as unpatentable over U.S. Patent No. 6,374,357 to Mohammed et al., and Brody’s U.S. Publication No. 2001/0051928 and further in view of U.S. Patent No. 6,948,070 to Ginter et al.

Applicant respectfully requests the Examiner to reconsider the bases for the rejections under 35 U.S.C. Section 103 based on the criteria and governing law urged above. The Supreme Court set the standard for evaluating obviousness in its recent decision (*KSR International Co. v. Teleflex Inc. et al.* (550 U.S. 127 S. Ct. 1727 (2007))) to be “expansive and flexible” and “functional.” But, the standard is not controlling. Instead the various noted factors only “can” or

“might” be indicative of obviousness based on the facts. The Supreme Court in *KSR* enunciated the following principles:

“[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, Section 103 likely bars it patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill....[A] court must ask whether **the improvement is more than the predictable use of prior art elements according to their established functions.**

The Supreme Court in *KSR* also stated that:

a patent composed of several elements is not proved obvious merely by demonstrating that **each of its elements was independently known in the prior art.**

The Supreme Court in *KSR* has also stated that:

[o]ften, it will be necessary for a court **to look to interrelated teachings of multiple patents;** the effects of demands known to the design community or present in the market place.

Further, the Supreme Court stated in *KSR* that:

The Court [in *United States v. Adams*, 383 U.S. 39, 51-52 (1966)] relied upon the corollary principle **that when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.**

Applicant respectfully submits that claims 1, 6, 7, 8, 14, 18, and 20 are amended to recite a limitation not met simply by the combination of Mohammed et al. and Brody’s U.S. Publication No. 2001/0051928. Applicant respectfully requests the Examiner to reconsider the claims here and the rejection in view of the combination of Mohammed et al. and Brody’s U.S. Publication No. 2001/0051928 further in view of U.S. Patent No. 6,948,070 to Ginter et al, for the reasons that **the improvement is more than the predictable use of prior art elements according to their established functions.**

Application No.: 09/727,953  
Reply to Final Office Action of: August 13, 2007

**CONCLUSION**

In light of the above amendments and remarks, Applicant respectfully requests reconsideration of the rejected claims and solicits their allowance. In the event, an interview is useful in resolving any issues, the Examiner is invited to telephone the undersigned representative.

Respectfully submitted,

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Dated: October 31, 2007

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